IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 133 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANISH @ JOHN GOPALBHAI SHAH

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/03/2000

ORAL JUDGEMENT

1. Deputy Commissioner of Police, Traffic Branch,

Ahmedabad City, Ahmedabad passed the order on November 6, 1999 in exercise of the powers under section 56(b) of the Bombay Police Act, 1951 (hereinafter referred to as the "Act") externing the petitioner from the territories of the Police Commissionerate, Ahmedabad and contiguous districts of Ahmedabad (Rural), Gandhinagar, Kheda and Mahesana for a period of two years.

2. Being aggrieved by the said order, the externee approached the appellate authority under section 60 of the Act. The appellate authority after considering the merits and the rival side cases, dismissed the appeal.

3. The externee/petitioner has challenged the order of externment on various grounds. However, Mr.Prajapati, learned advocate appearing for the petitioner has restricted his arguments to the ground of order having been vitiated for want of audience being given by the externing authority. Another argument is that, the appellate authority has taken into consideration the factor which is extraneous and irrelevant for two reasons. First being that the cases registered against the externee were not considered by the externing authority for passing the order of externment are considered by the appellate authority and secondly that the offences which are considered were the offences wherein the externee was acquitted after the trial by the competent court. Mr.Prajapati, therefore, urged that neither the order of externment nor the order of the appellate authority can be sustained and the same may be quashed by allowing the petition.

4. Mr.Dave, learned Additional Public Prosecutor has opposed this petition.

5. Considering the rival side contentions, the petition deserves to be allowed for the reasons that the externee was not given an opportunity of making the representation before the externing authority, namely, Deputy Commissioner of Police. In this regard, it may be noted that, there is no dispute about the fact that externment proceedings were conducted. They were conducted by the Assistant Commissioner of Police where after it is evident from the externment order that the Deputy Commissioner of Police, before passing the order of externment, deemed fit proper and necessary to hear the proposed externee, and he, therefore, issued the notice. This aspect is not disputed. The externing authority observed that the proposed externee deliberately avoided to appear before the externing authority, and therefore, the matter is proceeded exparte

against him in his absence. However, Mr.Dave, learned Additional Public Prosecutor after consulting the file states that, notices were issued twice upon the proposed externee by the externing authority, namely, Deputy Commissioner of Police, but could not be served on him, and therefore, the matter was proceeded exparte. If, this is so, the order is passed without affording an opportunity to the petitioner by the externing authority. It is stated assertively at the bar by Mr.Prajapati that, no notice is served by the Deputy Commissioner of Police. Under these circumstances, if proposed externee is not served with the notice, the externing authority could not have observed that the proposed externee has deliberately avoided to appear before him. In absence of the service of notice, it would not have been proper, just or legal to have expected proposed externee to have appeared before the externing authority. No knowledge can be attributed in this regard to the proposed externee, and therefore, there is a breach on the part of the externing authority of affording an opportunity of making the representation and defending his interest on the externee. This ground alone is sufficient to vitiate the externment order.

6. Apart from this, it is interesting to note that, in the notice under section 59 of the Act two offences were referred to which are registered against the petitioner. They are Baroda City Police Station CR No.95/95 and Kalupur Police Station CR No.336/97. The petitioner in reply to the notice brought it to the notice of the externing authority that he has been acquitted in these two cases after a trial. The externing authority has not made the reference to these cases while passing the order of externment, and rightly so, however, when the matter was carried in appeal, the appellate authority has taken into consideration these two offences dismissed the appeal, and therefore, the order of externing authority is based on extraneous and irrelevant material for two reasons, first being that in these two cases, the petitioner was acquitted and second being that it was not relied upon by the externing authority, the order which was under challenge before the appellate authority.

7. In view of the above discussion, the petition deserves to be allowed setting aside the order of externment and that of the appellate authority confirming the externment order.

8. The petition is allowed. Externment order passed by the Deputy Commissioner of Police, Traffic Branch,

Ahmedabad City, Ahmedabad on November 6, 1999 and the order of the appellate authority dated January 21, 2000 are hereby quashed and set aside. Rule is made absolute.

(A.L.Dave,J.)

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